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CONTRIBUTIONS AND REQUISITIONS IN WAR.

The interest of the world in the right of a belligerent occupying territory of the enemy to exact contributions, requisitions and ransom has been greatly stimulated by the practice of German commanders in the present war, requiring payments from the cities occupied, notably and on a great scale in case of the cities of Brussels and Antwerp, but in many other cases as well.

I quote, from dispatches published in the newspapers of December 1, 1914:[1]

"Amsterdam, Nov. 30.—A message from Brussels to the *Handlesblad* states that the German governor of the province of Brabant, in which Brussels is located, convoked a meeting of the financiers, and told them that Belgium must pay 35,000,000 francs ($7,000,000.) monthly for the maintenance of the German troops.

"In addition to this sum, it is said, Belgium must contribute a war levy of 375,000,000 francs ($75,000,000.) as a penalty for violations of neutrality by Belgium and losses ensuing therefrom to Germany."

I do not venture to affirm details or discuss them in dependence on the press. The fact, however, can not be doubted that heavy contributions and requisitions are being required of Belgian communities.

The interest of our own people has been further aroused by the statement of Mr. Roosevelt that he has seen the plans of two foreign nations for seizing, in case of war, our principal seaport cities and holding them for ransom.

It seems therefore of present interest to discuss the following questions:

1. Are such demands for contributions allowed by the law of civilized warfare?

[1]See Washington *Post* of Dec. 1, 1914.

2. If allowed, how, if at all, is the right regulated or limited?

3. How may the demands be enforced?

We must remember that law is, generally, an historical development and survival; that this is as true of the law of war as it is of the law of peace. If we find the rules of war severe, we must remember that the modern rules are often modifications of others, far more harsh, which were their predecessors, and that the substitution was approved because a simple repeal of the law was not possible. The process of humanization must go on, however, and there must be no limit to it, except that it must always be practicable and such as can be enforced and will be adhered to under the stress of actual war. These conditions are imperative.

The selling of prisoners of war into slavery replaced the earlier practice of putting them to death, often with torture.

As Grotius says, the laws of slavery "are introduced by the Laws of Nations for no other cause than this; that the captors, induced by so many advantages, may willingly abstain from the extreme rigour by which they were allowed to put captives to death, either immediately or after any delay, as we have said. They are called *servi,* says Pomponius, because conquerors commonly sell them, and so preserve them from being killed."[2]

When a city had resisted and was taken, the rule of the Old Testament was not lenient. Here it is: "When the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword; but the women and the little ones and the cattle and all that is in the city, even all the spoil thereof, shalt thou take unto thyself; and thou shalt eat the spoil of thine enemies which the Lord thy God hath given thee."[3]

The slaughter of the inhabitants of towns taken by assault and the appropriation and destruction of their property and the selling of prisoners of war into slavery were common in the best periods of Greece and Rome.[4] The Christian Church sought to mitigate these practices which yet continued in the Middle Ages.[5]

But the enslaving of prisoners of war gradually died out, and had disappeared when Grotius wrote, in 1625. Ransom took the

[2]Grotius, *De Jure Belli et Pacis* (Whewell's translation) Vol. 3, 151.

[3]Deuteronomy, Ch. 20, verses, 13 & 14, quoted in Stockton, Outlines of International Law, 23.

[4]Bordwell, Law of War, 8; Grotius, *De Jure Belli et Pacis,* Book III, c. XII, (Whewell's translation) Vol. 3, 230-231.

[5]3 Phillimore, International Law, 142; Bordwell, Law of War, 22.

place of sale, and those not ransomed were often miserably put to death. Thus the English taken at Pontoise in 1441 were chained by their necks like dogs, and those who could not pay were thrown into the Seine.[6]

As is well known, Grotius' treatise on *"The Law of Peace and War"*, published in 1625, produced a profound effect. It was an age of progress, and Grotius had a large mind, great learning and a humane heart. He established permanently certain natural laws, founded on reason and humanity, as controlling even in war. Necessity alone was permitted to override them.[7]

Gustavus Adolphus, the great military character of this age, became the ardent disciple of Grotius and was never without a copy of his great work, which has not ceased, in nearly three centuries of existence, to command the respect and veneration of mankind. Yet, six years after its publication, Magdeburg was stormed, burned, and put to sack with every conceivable horror by Tilly, when 30,000 out of 36,000 inhabitants were butchered without regard to sex or age.

Gustavus Adolphus, during this Thirty Years War, had ransomed towns from pillage; and the great commanders of Louis XIV followed him as their master and exemplar.[8] As Bordwell points out, "One of the greatest advances ever made in the conduct of warfare was the substitution, during this period, of contribution for pillage."

Marshal Saxe describes his systematic method, saying: "An experienced general, so far from maintaining the troops under his command at the expense of their sovereign, will, by raising contributions, secure their subsistence for the ensuing campaign, so that well lodged, clothed and supported, they will consequently be easy, content and happy." He advised that circular letters be sent to various places, threatening the inhabitants with military execution if they refuse the demands made on them, "which ought at the same time, to be moderate and proportionable to their several abilities." Parties of twenty-five to thirty men with officers are to be allotted certain villages, ordered to march by night, and not to plunder or commit any outrages on pain of death. On arriving in the neighborhood of their destination, they should send an officer and two men to the chief magistrate to know if he will

[6]Bordwell, Law of War, 19-20.
[7]Bordwell, Law of War, c. III.
[8]Bordwell, Law of War, 42; Hall, International Law (6th ed.) 420.

furnish the supplies and take an acquittance under the seal of the commander-in-chief. If he will not, the force burns some detached houses and marches away, threatening to return and burn the whole village. The parties meet at a rendezvous, all guilty of rapine are hanged, and those who have done well are rewarded.

Marshal Saxe estimates that twenty parties, despatched monthly, will be adequate and more effective than large bodies; and he adds, "nothing can be more entertaining than these incursions and the soldiers themselves will certainly take pleasure in them."[9]

In earlier times, as in the Thirty Years War, where armies were collected from adventurers of all nations and were not paid, but "lived by requisitions, made food and winter quarters the object of the campaign," plunder and brutality were inevitable.[10] In the War of the Succession, Marlborough and Villars introduced better methods. By understandings between the commanders, they levied only on the territory they occupied, and limited the amount to that determined by commissioners of the hostile parties. "Villars declares his satisfaction," says Woolsey, "at having fed an army of two hundred battalions and of more than three hundred squadrons of cavalry for three months on a space near the Rhine of a hundred square leagues without forcing a peasant to quit his dwelling."[11]

Let this be recorded to the lasting glory of that great commander, not less to be remembered than his brilliant victories at Denain or Landrecies.

"In the war of the Revolution, England declared it to be a right in war (1) to demand provisions and raise contributions, which might be enforced, if necessary, by the sword; (2) to ravage a territory where you have no other way of bringing an enemy to an engagement or to terms." But it is believed "the right to ravage has not been asserted or acted upon since, unless in a few cases which were pretended to be extreme."[12]

Enlightened selfishness and humanity generally dictate the same course of conduct. So, as Professor Bordwell points out, "The respect with which private property on land is regarded to-day is largely due to the change from pillage to the system of contribu-

[9]Marshal Saxe's Memoirs upon the Art of War, 94-97, quoted at length in Bordwell, Law of War, 43-45.

[10]Woolsey, International Law (6th ed.) 218.

[11]See Woolsey, *loc. cit.*

[12]See Woolsey, *loc. cit.*

tions, a change that was induced by the greater efficiency of the latter; and many other instances could be cited of ameliorations, which have been brought about by the selfish interests of belligerents."[13]

"The custom has since hardened into a definite usage," says Hall.[14]

Vattel points out that a nation taking up arms in a just cause has a double right, namely, to get back her property, withheld by the enemy, and, in addition, to exact "the charges of the war and the reparation of damages."[15]

Bluntschli declares that the army which occupies the territory of the enemy has the right to exact that the inhabitants contribute gratuitously to the entertainment and transport of the troops and material of war.

Calvo,[16] in his great work, which is such a mine of precedent, shows (to freely translate and condense his statement) that when an army invades a country it must subsist, and the law of necessity permits the imposition of contributions or requisitions, in kind or in cash, and the application to the maintenance of the troops of a portion of the usufruct of the lands whose free enjoyment and exploitation are left to the inhabitants. Anciently, he says, it was the usage to crush with imposts the people invaded; that some writers justify this as accomplishing the object which belligerents ought to entertain, namely the weakening of the enemy. But this theory is in flagrant contradiction to the principle which establishes that war is directed solely against the state and not against the subjects taken separately. Just as the enemy has not the right to force these last to enter its service, so it can not compel them to furnish the money necessary to continue the war. Experience elsewhere, he says, has demonstrated that this abuse of force serves only to exasperate the population and to envenom the wars. Moreover, the changes and progress in the administration of armies have, little by little, caused the system of military contributions to fall into desuetude, and strengthened the sentiment of respect for private property, so that, in our day, (this was published in 1896) when an army is constrained to have recourse to coercive measures

[13]Bordwell, Law of War, 1.

[14]Hall, International Law (6th ed.) 420.

[15]Vattel, Law of Nations, c. IX, 364; Bluntschli, *Droit International*, (Lardy's translation) 368, *et seq.*

[16]Calvo, *Le Droit International Théorique et Pratique*, Vol. IV, §§ 2231-2244.

to procure what it needs, an indemnity is paid to the despoiled owners. He points out that Bismarck himself recognized the strength of this principle, when in the negotiations preceding the convention of Frankfort, the German plenipotentiaries peremptorily refused to consider acts anterior to March 3, 1871, saying that Bismarck had remitted one billion from the sum of six billions of francs at first demanded from France and, by the concession, had freed himself from all claims for occupation of the invaded territory.

Napoleon, who fully adopted and practised the rule that "war should pay for war," records in his memoirs that the excesses committed under this head, in the war against Spain, contributed not a little to the reverses which he experienced in the Peninsula.[17] He constantly exacted ransoms, both in cash and in kind. For instance, for suspense of operations at Plaisence, in May 1796, the Duke of Parma was held to pay a contribution of two million livres, and to furnish 700 horses, a certain quantity of forage and provisions, and twenty pictures at the choice of the commanding general. Halleck[18] shows that after Jena Napoleon caused Prussia to pay upwards of 100,000,000 francs; and that he forced Valencia in 1812 to pay 50,000 francs, together with an additional 200,000,000 francs for the use of the army. By the Treaty of 1815, however, France was compelled by the allies to pay 700,000,000 francs in return.[19]

Wellington seems to have thought of requisitions as iniquitous, and he abstained from them, both when he was among friends, as in Spain, and among enemies, as in France; and, when the Ministry urged them upon him, he opposed the system "as needing terror and the bayonet to carry it out, *as one for which the British soldier was unfit, and as likely to injure those who resorted to it.*"[20]

This is a statement which does honor to the great Duke and the men he led to victory.

After Waterloo the allied army received provisions and forage on requisitions. Receipts were given for all goods taken, not with a view to paying for them, but to avoid abuse and plunder, and restrict the taking to food and forage.[21]

[17]Calvo, Vol. IV, §§ 2232-2255. Beginning at the latter section Calvo enumerates many such exactions, devoting three and a half pages to examples thereof.

[18]Halleck, International Law (4th ed.) Vol. II, 86, note.

[19]Calvo, Vol. IV, § 2271.

[20]Woolsey, International Law (6th ed.) 219.

[21]Halleck, International Law (4th ed.) Vol. II, 86; Wellington's Dispatches, 1815.

Austria, in 1847, imposed on the King of Sardinia a contribution of 65,000,000 francs; England adopted a like practice with the Chinese. Again, in our Mexican War, Secretary of War Marcy maintained the right of a combatant to live on the country occupied and to make the whole burden of the war weigh on the enemy; but General Scott, more prudent, paid for any supplies that he needed and took by force only on rare occasions when it was not possible to do otherwise.[22]

In 1856, at the close of the Crimean War, no pecuniary reclamation was allowed against any nation, and it was erroneously hoped that the practice had been abandoned.[23]

Instances of exactions recur in the wars of France against Cochin-China in 1862, and the United States, Great Britain, France and The Netherlands against Japan in 1864.[24]

As to the practice in our Civil War, the books are singularly reticent. Much freedom in foraging and living off the country seems to have been tolerated, but no system of regular requisitions or contributions seems to have been employed. Receipts, I am told by an army officer of the highest rank, were given, and later many of these were redeemed by payment, but many were lost.[25]

Calvo expresses the opinion that Prussia is, without contradiction, the most excessive of states in her pecuniary demands.[26] She exacted 100,000,000 thalers from the several states in her Austrian war, and from France, in 1871, 5,000,000,000 francs, besides two provinces. These conditions, he says, were far more onerous than those imposed by the allies in 1815.

In 1878 Russia exacted from Turkey 802,500,000 francs.[27] A note to the last citation, written in 1896, shows a total of war indemnities since 1795, independent of exacations in kind (*en nature*), equal to 7,235,000,000 francs, of which Prussia's part was 5,225,000,000 francs, that of France was 875,200,000 francs, and all other nations 1,135,000,000 francs.

The books discuss, in connection with contributions and requisitions, these indemnities and exactions required as a condition of the treaty of peace at the conclusion of the war. These, however, should not be confused with the exactions from territory un-

[22]Calvo, Vol. IV, § 2233; Halleck, International Law (4th ed.) Vol. II, 86; Hall, International Law, 424.

[23]Calvo, Vol. IV, § 2278.

[24]Calvo, Vol. IV, §§ 2274-2275.

[25]See, as to General Sherman's practice, Halleck. International Law, (4th ed.) Vol. II, 83, note.

[26]Calvo, Vol. IV, §§ 2279-2280.

[27]Calvo, Vol. IV, § 2281.

der military occupation, which are more particularly the matter in question here. The terms of peace on which the victor surrenders his conquest may be whatever the parties see fit to stipulate.

Calvo makes a distinction, which publicists sometimes neglect, between contributions and requisitions,[28] quoting Garden to the effect that contributions of war have been substituted for pillage. They may be in money or in kind, and are usually exacted under penalty of military execution. The payment of these contributions, he asserts, ought to assure the conservation of property of all kinds, but, in practice, it does not free the inhabitants from requisitions by the conquerors. By requisition is understood the demand of detailed objects, in the form of an invitation, but pursued with force if it becomes necessary. This mode of service and the expression which designates it, he says, was invented by Washington in the American War.

Calvo contends that, as pillage and devastation are no longer considered as rights of war but are now reproved by the general practice of nations, the imposition of contributions has no more a *raison d'être*. He says that Bluntschli blamed the Prussians, in their war with Austria and other German states, in 1866, for levying, without sufficient excuse, money contributions on several cities which they occupied: *"L'Europe actuelle, dit il, n' admet plus cette façon d' agir, reste des temps barbares."*

He shows[29] that in the invasion of France, in 1870, the German commanders proclaimed the communes liable for acts of hostility by civilians, as injuries to telegraph lines, railroads, bridges or canals. They imposed heavy contributions to be paid and threatened burning in case of non-payment. Furthermore, enormous contributions were imposed on territories for acts to which they were wholly foreign. So the *Departments de l'Aisne, des Ardennes* and *de l'Aube* were held for contributions of three million of francs as an indemnity to owners of foreign ships, and to Germans who had been expelled from France; and the *Departments de Seine et Marne,* of *La Meuthe* and *La Meuse,* had especially imposed on them, for the profit of the same ship owners, the sum of 2,755,253 francs.

Calvo admits, with most authors, that the army which occupies enemy's territory may exact from the communes or inhabi-

[28]Calvo, Vol. IV, § 2235.

[29]Calvo, Vol. IV, § 2236.

tants what is necessary for its support and movements, but maintains that requisitions ought to be limited to things absolutely indispensable. He says that it was so understood by Washington, to whom has been attributed the first application of the system. Washington had recourse to it only in cases of urgent necessity. He then demanded, under the form of an invitation, those things of which his army had need from those who possessed them. If they were refused he employed force. He operated in countries poor and almost deserted, and he regarded it as his first duty not to let his soldiers die of hunger. Therefore his requisitions were addressed as well to friends as to enemies.

The statement constantly made and quoted from Calvo, apparently in sole reliance on Garden, that Washington invented the term "requisition" and the practice as well, seems unwarranted. That the practice antedated him by generations is fully shown by many instances already mentioned; and Hall,[30] admitting that he may possibly have first used the term, shows, in a long note, the frequent employment of this method in earlier times.[31]

Calvo says[32] all writers agree in recognizing that the right of requisitioning ought to be exercised with moderation, and proportionately to the resources of the country occupied; and the great part are of the opinion that the delivery of the objects required, even when constrained, ought not to be made except on payment in money or in requisition bonds. He quotes at some length, in support of this view, from Garden, Massé, Heffter, the Instructions for the Armies of the United States, and Bluntschli. He gives a discussion of the Conference of Brussels of 1874, and the rules adopted, in accord with the opinions above, limiting demands "to necessities of war", and providing that receipts shall be given and that only the commandant in the locality occupied can make a requisition.

It appears[33] that the German army in France, in 1870-1871, frequently made exorbitant requisitions beyond the resources of the municipal treasury; moreover, the communities contributing were often not exempted from any of the charges of war but were none the less compelled to lodge officers and soldiers in their private homes and to deliver regularly food, clothing, munitions, etc.

[30]Hall, International Law (6th ed.) 427-428.
[31]See also Bordwell, Law of War, 46.
[32]Calvo, Vol. IV, § 2238.
[33]Calvo, Vol. IV, § 2254.

By the official report of the National Assembly of France it appears, for instance, that in the Departments invaded the contributions for the war amounted to 39,000,000 francs, the imposts of the Germans to 49,000,000, and the requisitions to 327,000,000, totally 415,000,000. When the armistice was signed at Versailles, January 28, 1871, by its terms, Paris was to pay 200,000,000 francs, 6,530,244 francs of which were deducted during the days following the ratification of the preliminaries of peace.

The daily requisitions for the Germans occupying Versailles were 120,000 loaves of bread, 80,000 pounds of meat, 90,000 pounds of oats, 27,000 pounds of rice, 7,000 pounds of roasted coffee, 4,000 pounds of salt, 20,000 litres of wine and 500,000 cigars.[34]

In this war, the French troops levied requisitions on their own countrymen in several instances.[35]

In Prussia, during the years 1870-1871, "a syndicate of bankers was formed for advancing money to towns unable to meet requisitions and contributions; 4,000,000 francs were advanced to Nancy, through this channel."[36]

In the Russo-Japanese War, material and services were requisitioned by the Japanese army in Manchuria with military checks redeemable in coin. Prices were settled, as fairly as possible, by the Chinese Chamber of Commerce, lists were publicly posted and the army complied with these schedules.[37] This practice seems as just, enlightened and advanced as any recorded.

Contributions and Requisitions Allowed.

We find ourselves then constrained to admit that the right of exacting contributions and requisitions within territory held by military occupation in time of war has been fully established, constantly exercised, and accepted in most great European wars, for a period of two or three centuries, as a great improvement on the old system of loot and pillage. Moreover, it is equally well established that the exactions should be limited to what is reasonable and practicable, having in view the resources and situation of the community from which they are demanded. Hall sums up the matter as follows:[38]

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[34]Halleck, International Law (4th ed.) Vol. II, 89.

[35]Halleck, *loc. cit.*

[36]Edwards, Germans in France.

[37]Takahashi, International Law as Applied to the Russo-Japanese War, 260.

[38]Hall, International Law (6th ed.) 423.

"No usage is in course of formation tending to establish or restrain within specific limits the exercise of rights to levy contributions and requisitions. The English in entering France in 1813, the army of the United States during the Mexican war and the allied forces in the Crimean war abstained wholly or in the main from the seizure of private property in either manner; but in each case the conduct of the invader was dictated solely by motives of momentary policy and this action is thus valueless as a precedent."

Heffter[39] says requisitions are, even to-day, indispensable to all armies of invasion, and confirms the statement that abstinence in the wars last mentioned was merely a matter of policy. He thinks, however, that "contributions to-day are exceptions justified only by special reasons."

Hall says,[40] "the former custom of pillage was the most brutal among the recognized usages of war. The suffering which directly attended it was out of all proportion to the advantages gained by the belligerent applying it; and it opened the way to acts which shocked every feeling of humanity. In the modern usage, however, so long as it is not harshly enforced, there is little to object to; as the contributions and requisitions, which are the equivalents of composition for the pillage, are generally levied through the authorities who represent the population, their incidence can be regulated; they are moreover unaccompanied by the capricious cruelty of a bombardment, or the ruin which marks a field of battle."

This would apply in the present war to the exactions from Brussels; but Antwerp and various other cities suffered "the cruelty of a bombardment" prior to occupation and the exactions of the German commanders.

As to the Rights of a Naval Force.

The precedents on the subject under discussion have been, up to this time, it is believed, confined to operations by land forces.[41] In 1882, however, Admiral Aube of the French Navy published an article in the *Revue des Deux Mondes* suggesting that "armored fleets in possession of the sea might hold coast towns mercilessly to ransom", and advocated this as the true policy of France in the event of war with England. England interrogated France

[39]Heffter, *Droit International* (Bergson's translation) 301-302.

[40]Hall, International Law (6th ed.) 420.

[41]Oppenheim, International Law, Vol. II, 219.

as to her responsibility for this doctrine and France dissociated herself from it, but, presently, appointed Admiral Aube Minister of Marine and permitted him to change the program of ship-building so as apparently to facilitate the proposed measure. In the English maneuvers of 1888-1889 the practice was adopted and imaginary contributions levied on various English cities, including Liverpool. Professor Holland objected in the *Times,* lest this establish a precedent for enemies; correspondence followed, and various naval officers of authority combatted Professor Holland's views. It has since become known that in 1878 the Russian fleet at Vladivostok was intended to lay the undefended ports of Australia under contribution if hostilities broke out.[42]

Hall thinks such requisitions lawful, but that contributions can not be exacted unless a force is at least ready to land and actually take possession.[43] He regrets that in the naval maneuvers of 1889 a practice, wholly indefensible, was adopted, two officers being sent into Peterhead and Edinburgh—the demands being by a force entirely unprepared to land.

Dr. Oppenheim thinks Hall's arguments logically correct, but doubts whether the future practices of naval war will conform to his views and says that there is no doubt that towns which are defended can be bombarded. Latifi, however, thinks, and, I submit, rightly thinks, Hall's point erroneous and that he has confused a "right, with sanction for its enforcement."[44]

In 1896 the Institute of International Law at the meeting at Venice adopted a series of resolutions holding the rules of bombardment should be the same in land war and sea war, and apparently approving the bombardment of undefended towns for various special purposes and among others:—

"For the purpose of obtaining by requisitions and contributions what is necessary for the fleet," but,

"Bombardments of which the object is only to exact a ransom are specially forbidden."

The United States Naval War Code in forbidding the bombardment of open towns makes an exception "where the reasonable requisitions are not complied with."[45]

Let us hope that the practice of that Spanish Archduke will

[42]Hall, International Law (6th ed.) 427-428; Oppenheim, International Law, Vol. II, 219.

[43]Hall, International Law (6th ed.) 430.

[44]Latifi, Effect of War on Property, 35.

[45]Oppenheim, International Law, Vol. II, 220-223.

not be esteemed a valid precedent, who, during the wars in the low countries, "hanged twelve sick Dutch soldiers made prisoners in a stranded vessel on the plea that they were taken at sea where there were *no laws of arms to be observed.*"[46]

The Brussels Conference.

In 1874 a conference of delegates representing Great Britain, Germany, Russia, Sweden and Norway, the Netherlands, Belgium, Switzerland, Greece, Italy, Austria, Denmark, Spain and France met at Brussels and adopted a *Project of an International Declaration Concerning the Law and Customs of War.* The United States declined to participate on account of the lateness of the invitation. Great Britain limited her participation and declined wholly to be bound by the results.[47]

Fifty-six rules were adopted and those touching on the topics discussed provide as follows:

"XL. As private property should be respected, the enemy will demand from parishes, communes or the inhabitants, only such payments and services as are connected with the necessities of war, generally acknowledged, in proportion to the resources of the country, and which do not imply with regard to the inhabitants, the obligation of taking part in the operations of war against their own country.

"XLI. The enemy, whether as equivalent for taxes (*Vide* Art. V.) or for payments which should be made in kind, or as fines, will proceed as far as possible, according to the rules of the distribution and assessment of the taxes in force in the occupied territory, the civil authorities of the legal government will afford their assistance if they have remained in office, contributions can be imposed only on the order and on the responsibility of the general in chief, or of the superior civil authority established by the enemy in the occupied territory. For every contribution a receipt shall be given to the person furnishing it.

"XLII. Requisitions shall be made only by the authority of the commandant of the locality occupied. For every requisition an indemnity shall be granted or a receipt given."[48]

It will be observed that indemnities or receipts are required in all cases, but there is no provision of any sort for making good the receipt.

[46]Stockton, Outlines of International Law, 40, quoting Grotius, p. 398.

[47]Halleck, International Law (4th ed.) Vol. I, 609, merely says that no nation was bound.

[48]See Scott's Texts of Peace Conference at the Hague, 387.

The Laws of War on Land, recommended by the Institute of International Law at Oxford in 1880, contained almost identical provisions; sections 56 to 60.[49]

The Hague Conference of 1907 in its turn adopted rules almost identical with the above, articles 51 to 53; but as to matters in the closing paragraph of article 52 it went further and provided that "contributions" in kind shall, as far as possible, be paid for in cash, if not a receipt shall be given and the payment of the amount shall be made as soon as possible.[50]

Professor Holland had definitely stated this lack of obligation to pay the amounts receipted for. In his *Law of War on Land* he shows that a Swiss proposal, offered at the First Hague Conference, requiring such payment, was deliberately rejected.[51] Later in his letters to the *Times*,[52] however, he shows that the modification was adopted at the Second Hague Conference but only as to "requisitions", and that it does not apply to "contributions".

Professor Westlake, and no one's opinion is entitled to more weight, thinks the restriction of the Hague Convention limited "contribution, so far as not expended on the administration of the occupied territory, to an equivalent for requisitions", and thinks it "not intended to permit the levy of money to be spent in the invader's own country in supplying the necessities of his army. The provision made at home must be borne by him out of his general resources, except so far as he may be able to recover its cost from the enemy as a war indemnity at the peace."[53]

Dr. Hans Wehberg[54] thinks the whole regulation as to contributions being in proportion to the resources of the country, practically devoid of meaning, saying: "No heed can in reality be paid to this, because the welfare of the soldiers comes first." This conclusion, which he published in 1911 has, it is feared, been strongly confirmed by the events of 1914.

The Declaration of London.

The Declaration of London of 1909, which was understood to codify and make definite the laws of naval warfare, was refused confirmation by Great Britain. The United States, though the Declaration was duly confirmed by the Senate, has in consequence

[49] *Idem*, 396.
[50] "*Sera effectué le plus tot possible*," Scott's Texts, 227.
[51] Holland, Law of War on Land, 51.
[52] Holland, Letters to the Times, 63, 64.
[53] Westlake, International Law, Part II, 101.
[54] Wehberg, Capture in War on Land and Sea, 45.

declined, through its Department of State, to be bound by it in the present war.

As the New York *Mail* recently observed, "The Declaration of London is thrown into a scrap heap," and if any of its provisions might, by their terms, appear to affect the present question they may safely be disregarded.

Air Craft.

The question of the right to requisitions and contributions on the part of air craft, threatening injury in case of refusal of their demands, so far as the writer has observed, has not arisen; but the principles applicable are merely those discussed above as to like demands by a naval force, only more *intensified* by the still more marked inability of the probable aerial force to take possession and the far greater limit to supplies needed by such force. Moreover, the rules of land war, it is believed, might apply.

Limits on Demands.

When we come to consider the limit which the law of war puts upon requisitions and contributions, it appears that the more respected military authorities and writers, the Institute, the provisions of the United States Naval Code, the rules adopted at the Hague as to land war and at the Conference of London as to naval war, limit them exclusively to the needs of naval and military forces in the locality, or of local administration, and forbid extortion.[55]

As we have seen, the levies must be reasonable and proportioned to the resources of the district or person assessed, both by the better authorities prior to 1907, and since then by the Hague regulations. No precedent, it is believed, exists as to relief in case this just and enlightened rule is exceeded.

It is suggested that a right to recover such excess might be asserted in the Hague Court on the return of peace, but the treaty of peace will probably, in all cases, adjust, provide for or terminate such claims. The victor dictates the terms of that instrument and the conquered submits, and thus the rule is still "Woe to the Vanquished."

The levy of contributions is stated as "a great exception to the general rule of the immunity of private property" by Latifi, in his monograph, *Effects of War on Property*.[56]

[55]Oppenheim, International Law, Vol. II, 146-150.

[56]Latifi, Effects of War on Property, 32.

He cites as examples of demands not justified by international law, Blücher's demand of 100,000,000 francs from Paris to pay his troops in 1815; also the Prussian exactions from German cities in 1866, and from French cities in 1870-1871. He says at Orleans General von der Thamm exacted 6,000,000 francs in one day; Rouen had to find 6,500,000 francs in five, whilst the little town of Haguenau was compelled to borrow from the bankers of Basle to pay its contribution of 1,000,000 francs. "Contributions of this kind," he continues, citing Bluntschli, "do not differ from general pillage except in name, and are not allowed by International Law."

I would respectfully submit that, unjust as they may be, they differ in all essentials from "general pillage", as is shown by the fact that they are met and discharged by orderly procedure.

As we have said, it is impossible fairly and justly to discuss the contributions and requisitions now being exacted by the German commanders in Belgium because the facts can not at present be fully examined and ascertained.

If, however, they are at all as commonly reported, it seems impossible to reconcile them with the rules of the Hague that they should be "in proportion to the resources of the country." The country is devastated, in distress and ruin, the people starving and objects of international charity on an enormous scale.

We must observe that the statement of Hall that, "The amount both of contributions and requisitions is fixed at the will of the invader," *remains in his text in the 6th edition of 1909, edited by Atlay,* and the notes do not mention any modification of the statement as required by the present state of the law.[57]

Dr. M. A. Pearce Higgins, in discussing the provisions of the Hague regulation, justly says the limitation means "that the inhabitants are not to be left in a starving condition";[58] yet, at page 65, he shows that the restraints of the law of war are utterly inadequate to prevent a *stern* and successful commander from causing inhabitants to suffer so that they must long for peace, in accord with the theory advanced by General Sherman.

Lammasch, the eminent Austrian representative at the Hague in 1899, urged that the enemy's strength should be exhausted by contributions and requisitions to hasten the termination of the war; but Dr. Hans Wehberg, in his *Capture in War on Land and*

[57]Hall, International Law (6th ed.) 422.

[58]Higgins, War and the Private Citizen, 61.

Sea,[59] successfully controverts this doctrine, and shows that it would overthrow all limitations and is no longer permissible.

Mode of Enforcing.

Hostages may be taken and held in confinement to enforce the satisfaction of demands of the character discussed.

The Governor General of Rheims in the Franco-Prussian War, ordered the confinement in Germany of various notables as hostages, as a guarantee of payment of sums due by the communes, and the order was partly carried out.[60] On failure to comply with the demands at the time specified "the invader takes such measures as may be necessary to enforce compliance at the moment or to guard by intimidation against future disobedience."[61] In illustration, Hall shows that when at Nancy in 1871 the Germans had requisitioned 500 workmen who were not forthcoming, works of the Department and the operation of the more extensive private factories were ordered suspended, and notice given that, on continued failure to respond, the inspectors and a certain number of workmen would be seized and shot.[62] The power of enforcement seems comparable to that of a civil court to compel compliance with its own decrees, which powers are indefinite, plenary and, in wrong hands, may prove cruel and harsh to the last degree. The higher court intervenes in various ways to prevent this, as by writ of prohibition, but no such intervention or review is practicable in these operations of war and the power of enforcement has few, if any, checks or limitations. However, any belligerent party, who violates the Hague regulations, by the terms of those regulations: "Shall, if the case demands, be held liable to make compensation. It shall be held responsible for all acts committed by persons forming part of its armed force."[63]

The usual mode of punishing a community collectively, is by imposing a fine. The German *Kriegesgebrauch im Landkriege,*[64] lays this down as the most effective means of bringing a civil population to book. Bluntschli admits that the Germans stretched

[59]Wehberg, Capture in War on Land and Sea, 42.

[60]Calvo, Vol. IV, § 2254.

[61]Hall, International Law (6th ed.) 422; Higgins, War and the Private Citizen, 62-63.

[62]See also Heffter, *Droit International* (Bergson's translation) 302.

[63]Fourth Hague Conference (1907) Art. 3, and Hershey, Essentials of International Public Law, 417.

[64]*Kriegesgebrauch im Landkriege,* 65.

this right beyond proper limits in 1870, and the Hague regulations expressly forbid a general penalty for acts for which the community "cannot be considered collectively responsible."[65] But as Professor Hershey, in his valuable notes at the above reference, shows, "the act punished need not necessarily be a violation of the laws and customs of war. Any breach of the occupant's proclamations or martial-law regulations, may be punished in this way." Moreover, punishment of this sort is allowed by way of reprisal. He shows further that "there is nothing unfair in holding a town or village collectively for damages done to waterways, telegraphs, roads, and bridges in the vicinity; it is the practice in all wars."[66]

Even so enlightened and humane a writer as Vattel, who remains to-day in many ways a light and guide to us in matters of humanity, while strongly condemning unnecessary hardships or destruction, and demanding "moderation, even in the most just war" makes an exception to all such limitations "where there is question of punishing an enemy." He shows that licentiousness is unavoidably suffered to pass with impunity and, to a certain degree, tolerated between nation and nation. "How then, shall we," he says, "in particular cases, determine with precision to what lengths it was necessary to carry hostilities in order to bring the war to a happy conclusion? And even if the point could be exactly ascertained, nations acknowledge no common judge; each forms her own judgment of the conduct she is to pursue in fulfilling her duties. If you once open a door for continual accusations of outrageous excess in hostilities, you will only augment the number of complaints, and inflame the minds of the contending parties with increasing animosity: fresh injuries will be perpetually springing up; and the sword will never be sheathed till one of the parties be utterly destroyed."[67]

Even at the present day, with the resources of the Hague regulations and tribunals, the conclusions of Vattel can not be wholly disregarded. Almost all of the rules of war, founded on humanity, are subject to an exception in case of "military necessity" which, like necessity in general, "knows no law". The judgment of the soldier, high or low, must often be exercised suddenly, in circumstances of almost frantic excitement, confusion and uncertainty as to many facts, when even the slightest pause may involve defeat

[65]Hershey, Essentials of International Public Law, 413.

[66]See also Bordwell, Law of War, 316-317.

[67]Vattel, Law of Nations, Book III, c. IX, § 172.

and destruction, death of colleagues and frustration of vital military operations. To pass upon such sudden and summary action in a judicial tribunal, sitting in cold review, with all the facts displayed and *marshalled* would impose a terrible danger on the soldier, and the knowledge that this might ensue would help to paralyse his action. Whether such a tribunal could act effectually and wisely, must be questioned. The present writer is in receipt of a letter from an eminent English judge of the highest rank, learning and character, expressing the hope that at the end of the present war an international tribunal may be arranged to try those who have violated the laws of war, and that those who have flagrantly so offended may be convicted and shot. Terrible as is the guilt of those who wantonly violate the laws of war and inflict rigors beyond those which these harsh laws allow, yet a long series of trials at the end of the contest, in which officers and men on each side should be accused, prosecuted and put to death could not be tolerated. They would so endanger and embitter the relations of the nations, needing and seeking peace, that war would revive. Better the rule of the Hague regulations that the belligerent is "responsible for all the acts committed by persons forming part of its armed force." Let the offending *nation* be compelled to make financial reparation for such excess as far as possible, but do not attempt execution upon the individual.

Burkheimer, in his excellent work on *Military and Martial Law,* says no instance is recalled where sufferers were indemnified by their own government.[68]

In the present war, in which the practice of each belligerent is denounced by the other, we are reminded of Montesquieu's famous saying that "all countries have a law of nations, not excepting the Iroquois themselves, though they devour their prisoners, for they send and receive Ambassadors and understand the rights of war and peace. The mischief is that their law of nations is not founded on true principles."[69]

As Rear Admiral Stockton declares in his *Outlines of International Law,* published some months after the present war had broken out: "In the occupation of territory, as suggested in preceding pages, the private citizen suffers in so many ways as to his person and property that it can be truthfully said that the

[68]Burkheimer, Military and Martial Law, 209.

[69]Montesquieu, Spirit of the Laws, Book I, c. III; Bordwell, Law of War.

so-called exemption of private property from capture or seizure on land may be called almost nominal."[70]

The regulations in force seem too indefinite, too subject to the law of supposed necessity, to protect the civil population from exactions and hardships almost as ruinous as the old pillage and loot. It is plain that one of the first duties of a period of peace will be their revision. The interest of the civil population must be adequately protected and the severities of war must be, more and more, confined to military and naval forces. That purpose must not be abandoned. The lessons of the present war enforce its necessity with appalling vigor. The task is difficult without question, but the necessity is imperative. In all wars, even in the present one, the civil population vastly outnumbers the military; its protection is, therefore, paramount.

We can not do better in closing, than to quote Woolsey's admirable statement. After admitting that requisitions and contributions are still *permissible,* and after defining them, he says: "Cruelty and inhumanity are as unavoidable in such transactions as they would be if the sheriffs and their men were to levy on goods by force of arms and pay themselves out of the things seized, moreover, requisitions are demoralizing and defeat their own ends. They foster the lust of conquest. They leave a sting in the memories of the oppressed nations who, when the measure of iniquity is full, league together to destroy the great plunderers of mankind. The only true and humane principle is that already laid down, that war is waged by state against state, by soldier against soldier"; and if the rule is observed, if the civil population in person and property is exempt from all but incidental injury and suffering, then we comply with the great principle of modern international law which Talleyrand quoted to Napoleon in 1806, "that nations ought to do to one another in peace, the most good, and in war, the least evil possible."[71]

In this time of conflict and confusion, when even steadfast men have begun to feel that all progress has ended and the rule of blood and cruelty has resumed its lawless sway, I venture to quote an elevated passage from Whewell's preface to his translation of Grotius' *De Jure Belli et Pacis,* which seems appropriate. It is as follows:

"The progress of the study of International Law on such principles as those of Grotius, and the increase of a regard for the

[70]Stockton, Outlines of International Law, 314.

[71]See Woolsey, International Law, 221, note.

authority of such law, are among the most hopeful avenues to that noble ideal of the lovers of mankind, a perpetual peace, the most hopeful because along this avenue, we can already see a long historical progress, as well as a great moral aim."[72]

We may, it is submitted, in the history of contributions and requisitions in war, discover the same "long historical progress" and in that progress, we also observe "a great moral aim", which we can not abandon and of which we must not despair.

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[72]Grotius, *De Jure Belli et Pacis* (Whewell's translation) Vol. I, preface, xii.